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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: MAY 26 2011

Office: NEBRASKA SERVICE CENTER

[redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as a model. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as an alien of exceptional ability and that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's concerns. The record does not contain the necessary initial evidence to establish exceptional ability. Moreover, counsel's assertions essentially amount to a request for a blanket waiver for all models of exceptional ability. As explained below, there is no basis for establishing a blanket waiver for any one occupation.

I. Law

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. Prior Nonimmigrant Visa Approval

At the outset, the AAO acknowledges that U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner. The prior approval does not preclude USCIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. Exceptional Ability

As stated above, the petitioner seeks to classify the beneficiary as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability
>
> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

(C) A license to practice the profession or certification for a particular profession or occupation

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

(E) Evidence of membership in professional associations

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates "a degree of expertise significantly above that ordinarily encountered" in the arts. 8 C.F.R. § 204.5(k)(2). *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. Specifically, the regulations state a regulatory standard and provide a list of suggested types of evidence, of which the petitioner must submit a certain number. Significantly, USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian,* 596 F.3d at 1221, *citing Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th Cir.2008). Thus, if the regulatory standard is to have any meaning, USCIS must be able to evaluate the quality of the evidence in a final merits determination.

In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian.* As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

In the request for additional evidence, the director stated that the petitioner has established that she meets two of the regulatory criteria. The director did not state which two the petitioner is alleged to meet. In the final decision, the director addressed a single criterion, concluding the petitioner did not meet that criterion.

For the reasons stated below, the record does not contain the requisite initial evidence under any of the criteria. As stated above, the AAO maintains *de novo* review. *See* 8 C.F.R. 103.3(a)(1)(iv); *Soltane*, 381 F.3d at 145; *Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability

The record contains no evidence that relates to 8 C.F.R. § 204.5(k)(3)(ii)(A).

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

Counsel asserts that the petitioner has been working as a model since she was 16 and has over 20 years of experience. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(b) specifically states that evidence submitted under this criterion must consist of letters from current or former employers.

In a letter dated October 6, 2007, [redacted] Creative Director at [redacted], asserts that she has worked with the petitioner for five years and continues: "but prior to that time, she also worked several years with my predecessor for a total of about 8 years with [redacted] of [redacted], affirms recommending the petitioner to clients but does not confirm any specific amount of employment. In a letter dated July 28, 2007, [redacted], a photographer, affirms having worked with the petitioner for the past six years. It appears this work overlaps with the petitioner's employment with [redacted]. [redacted], Senior Vice President of Design at [redacted], asserts that the petitioner has worked with him "for years." As Mr [redacted] provides no dates, the record does not establish whether this employment overlaps with the petitioner's employment with [redacted]

[redacted], Director of [redacted], affirms that she has been familiar with the petitioner since the petitioner joined [redacted] and states the petitioner has worked without interruption since age 16. Ms. [redacted] does not suggest the petitioner has worked for [redacted] that entire period and does not specify the petitioner's starting date with [redacted] Thus, [redacted] letter is insufficient to establish a specific amount of employment. In a joint letter dated November 11, 2009, [redacted] and [redacted] of [redacted] state that they began working with the petitioner "over nine years ago." This letter cannot establish ten years of full-time experience as of October 31, 2008, the date of filing.

The above letters do not meet the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(C) in that they are not letters from employers showing at least ten years of full-time employment. Thus, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(C).

A license to practice the profession or certification for a particular profession or occupation

The record contains no evidence that relates to 8 C.F.R. § 204.5(k)(3)(ii)(C).

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

In response to the director's request for additional evidence, counsel references a joint letter from [redacted] and [redacted] In this letter, dated November 11, 2009, [redacted] and [redacted] assert that [redacted] has offered the petitioner an exclusivity contract wherein they "have assured that [the petitioner] will have no less than 25 shoot-days per year and have promised her a yearly minimum compensation of $90,000." The petitioner did not submit the actual contract. Counsel extrapolates that the petitioner would earn $3,600 per shoot. Counsel also references an article posted at [redacted] submitted by the petitioner, stating that models "may earn between $150 and $250 per day." Counsel omits the second half of the second sentence that states a select few models earn as much as $500,000 per year. The article also states: "Steadily employed fashion models usually earn from $30,000 to $60,000."

The director concluded that $90,000 was not evidence of "what 'exceptional or a select few' earn." The director further noted that the petitioner did not submit evidence of her actual wages, such as an Internal Revenue Service (IRS) Form W-2. On appeal, counsel asserts that the regulations do not state what type of evidence is required to document remuneration. Counsel subsequently asserts that the director applied the standard from a higher classification pursuant to section 203(b)(1)(A) of the Act by noting that the petitioner was not among the top models.

The petitioner must establish her eligibility as of the filing date, October 31, 2008. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). The November 11, 2009 letter from [redacted] does not establish that the petitioner had already earned $90,000 per year as of the filing date. Moreover, the regulation at 8 C.F.R. § 103.2(b)(2) provides that the unavailability or nonexistence of primary evidence creates a presumption of ineligibility. Only where both primary and secondary evidence is documented as unavailable or nonexistent may a petitioner rely on affidavits. 8 C.F.R. § 103.2(b)(2). Counsel has not explained why USCIS must accept a letter stating the terms and conditions of a contract rather than require the contract itself.

On appeal, the petitioner submits her IRS Form 1099-MISC from 2009 for $118,850. This evidence postdates the filing of the petition and cannot establish her eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. The petitioner also submits her IRS Forms 1099-MISC for 2006, 2007 and 2008. These forms reflect income of $46,729 in 2006, $52,166.67 in 2007 and $161,982.06 in 2008. Counsel notes that the petitioner had a baby in 2006. The petitioner also submitted pay vouchers from earlier years and a 2009 contract between J. Jill and

[redacted] that postdates the filing of the petition. While the contract specifies that [redacted] agreed to a day rate for the petitioner's services of $3,200 plus 20 percent, [redacted] would pay that rate to the petitioner's agent, [redacted] Thus, the contract does not establish the petitioner's actual remuneration from this contract.

The petitioner has now documented her remuneration in 2008, the year she filed the petition. The petitioner also submitted other evidence explaining the type of remuneration ordinarily encountered in the field. Such evidence is qualifying evidence that meets the plain language requirements set forth 8 C.F.R. § 204.5(k)(3)(ii)(D).

Evidence of membership in professional associations

The record contains no evidence that relates to 8 C.F.R. § 204.5(k)(3)(ii)(E).

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

The petitioner did not provide certificates, plaques or other evidence of formal recognition independent of the preparation of the petition. Instead, the petitioner relies on general letters prepared in support of the petition attesting to the petitioner's exceptional ability. USCIS need not accept primarily conclusory assertions.[1] Moreover, merely repeating the legal standards does not satisfy the petitioner's burden of proof.[2] Several of the letters are almost entirely composed of nearly identical paragraphs. While the authors signed these letters affirming their contents, it is clear that the language is not their own. This decision will address the letters in more detail below. At this point it is sufficient to state that while these letters praise the petitioner's abilities, they do not constitute recognition for achievements *and* significant contributions *to the modeling industry* as a whole. In a letter dated November 18, 2009, the Director of [redacted] states that the petitioner has influenced the field of fashion modeling because she is an "older model," and that she "is enabling other older and more mature models to continue working in the industry or to re-enter the world of fashion and modeling."

The record contains no evidence to support the claim that the petitioner serves as an inspiration to maturing models or that she has increased the number of employment opportunities for "older models." For example, the record contains no statistics regarding the number of "older" models before and after the petitioner's work as an "older" model. The record also lacks published career information aimed at current or prospective models holding out the petitioner as an example of an older model able to continue working steadily. The petitioner also failed to submit materials from other older models affirming that they stayed in the field or rejoined the field after observing the

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[1] *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

[2] *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

petitioner's work. Thus, the petitioner did not submit qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F).

On appeal, counsel asserts that the director "failed to consider the overwhelming evidence submitted by the petitioner which constituted 'comparable evidence' pursuant to 8 C.F.R. § 204.5(k)(3)(iii)." The regulation at 8 C.F.R. § 204.5(k)(3)(iii) states that if the standards at 8 C.F.R. § 204.5(k)(3)(ii) "do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence." Counsel raises this argument for the first time on appeal. Thus, the director did not err in failing to consider "comparable evidence." On appeal, counsel asserts that licensure and professional memberships are not applicable to the petitioner's occupation. Counsel continues:

> Nevertheless, we submit that by virtue of the expert opinion letters submitted by the petitioner, as well as by the submission of her outstanding portfolio and other evidence documenting her achievements and influence in the field, it is readily apparent that the petitioner/applicant is indeed an exceptional fashion model and possesses exceptional talent in the field. According to federal regulations comparable evidence may include expert opinion letters. *See* 8 C.F.R. § 204.5(k)(3)(iii).

First, the evidence of record consists of the petitioner's remuneration, catalogues featuring the petitioner as a model and letters. The petitioner's remuneration falls under 8 C.F.R. § 204.5(k)(3)(ii)(D) and cannot also be considered comparable evidence. Counsel does not explain how appearing in catalogues, inherent to modeling, constitutes comparable evidence to either a license or a professional membership. Counsel notes that the petitioner appears on the cover of some catalogues. The record is absent evidence that selection for the cover page of these particular catalogues is recognized in the industry as significant. Finally, contrary to counsel's assertion, the regulation at 8 C.F.R. § 204.5(k)(3)(iii) in no way suggests that reference letters are acceptable comparable evidence.

In light of the above, the petitioner has not submitted evidence that qualifies under three of the evidentiary criteria. Nevertheless, the AAO will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated that the beneficiary has "a degree of expertise significantly above that ordinarily encountered." 8 C.F.R. § 204.5(k)(2).

While the petitioner's remuneration in 2008 is notable, it cannot, by itself, establish that the petitioner possesses a degree of expertise significantly above that ordinarily encountered in the field. Ten years of experience would bolster the petitioner's claim of exceptional ability; however, the petitioner failed to provide the initial required evidence to establish such experience. While counsel notes that [redacted] represents the petitioner, [redacted], [redacted] confirms that the company represents more than 2,000 models. Thus, representation by Ford Models is not evidence of a degree of expertise significantly above that ordinarily encountered. As discussed

above, the petitioner has not documented that the industry takes notice of which models are selected to appear on the cover of the catalogues that have featured the petitioner on their cover.

In light of the above, the petitioner has not established that she is an alien of exceptional ability.

IV. National Interest

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The use of the term "prospective" is meant to require future contributions by the alien and is not intended to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, modeling, and that the proposed benefits of her work, helping clothing manufacturers promote and sell their products, would be national in scope. It remains, then, to determine whether the petitioner will

benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, U.S. Citizenship and Immigration Services (USCIS) generally does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Initially, counsel asserted that the petitioner had established her exceptional ability and concluded: "Therefore, it is abundantly clear that [the petitioner's] rare level of experience, acumen and expertise for the benefit of the national interest welfare far outweighs the interest in protecting the U.S. labor market." Even if the petitioner had documented that she qualifies as an alien of exceptional ability, by statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *Id.* at 218.

In addition, counsel asserts that the alien employment certification process is inapplicable because the petitioner's "rare and valuable" skills as a model cannot be enumerated on an alien employment certification application and an employer would not be able to meet the Department of Labor's "business necessity" test to list unduly restrictive job requirements. Counsel concludes that the petitioner's "preeminent level of talent, acumen, and expertise cannot be quantified because her exceptional skills are contingent upon her highly creative talent and specialized knowledge in modeling."

The inapplicability or unavailability of an alien employment certification, while a factor, cannot be viewed as sufficient cause for a national interest waiver. *Id.* at 218, n.5. The petitioner still must demonstrate that the petitioner will serve the national interest to a substantially greater degree than do others in the same field. *Id.*

Counsel has asserted that the petitioner has received "wide acclaim" and affirmed the petitioner's "eminent status as a leading Fashion Model." Models with sustained national or international acclaim who are among the small percentage at the top of the field can qualify for first preference classification without a job offer pursuant to section 203(b)(1)(A) of the Act. Counsel appears to be attempting to avoid the job offer requirement normally required under section 203(b)(2) of the Act by using similar terminology to section 203(b)(1)(A) of the Act without submitting the extensive documentation required for that classification. Counsel cites no legal authority for the proposition that Congress intended the national interest waiver as a waiver for aliens who claim the type of acclaim and status to fall under a higher classification but lack the documentation for eligibility under that classification.

Even if it is counsel's position that the mere fact that the petitioner possesses a degree of expertise significantly above that ordinarily encountered among models warrants a waiver in the national interest, all models of exceptional ability possess such expertise. It is the position of USCIS to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *NYSDOT,* 22 I&N Dec. at 217. As stated above, exceptional ability, by itself, is not grounds for a waiver of the alien employment certification process. *Id.* at 218, 222.

In response to the director's request for additional evidence, counsel asserts that the evidence "clearly shows that [the petitioner's] work and accomplishments as a Model have imparted an influence on her field of endeavor." More specifically, counsel states that as an older model, the petitioner "imparts inspiration and influence on the field everyday."

On appeal, counsel asserts:

> First, as a model over the age of 25, the petitioner is a pioneer in her field. The petitioner is a leading and extremely sought after "older" or "mature" model with a highly successful career of more than 20 years. This is an extraordinary accomplishment in the field of fashion modeling where models start at a young age and careers typically last no longer than five to eight years. The petitioner, however, has been one of a very small number of women who has clearly overcome the age barriers and limits that have typically been imposed on women in her field by the industry. In fact, the petitioner's important impact in the world of fashion is evident through her enduring career and popularity which continue today. Significantly, the petitioner has been credited with expanding the modeling and related industries by opening up the world of fashion, advertising, and modeling to older or more "mature" women.

Counsel also relies on unpublished decisions by the AAO. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The record, which contains numerous catalogues in which the petitioner appears, amply establishes that the petitioner is able to secure employment as a model. The mere fact that modeling is a competitive industry does not warrant a waiver for every model with steady employment. An ability to secure employment as a model does not distinguish the petitioner from every other model working steadily in the field.

As stated above, the record contains several letters that contain several paragraphs that are nearly identical. Specifically, [redacted] Associate Creative Director for [redacted] Creative Director and Owner of [redacted] and [redacted] all provide such letters. The letters begin: "It is my distinct pleasure to submit this recommendation in support of the application of [the petitioner]. . . . I am quite familiar with [the petitioner's] body of

work and wish to state from the outset that she has achieved and demonstrated sustained international acclaim in the field of Fashion Modeling and her achievements have been widely recognized by her peers." After some personal information about the authors, the letters continue: "By virtue of my background, I feel qualified to support this application." The authors then list more about their background. The letters then contain 10 nearly identical paragraphs that begin with the following sentences:

- I have been privileged to work with top level Fashion Models from around the world. . . .
- Impressively, at the age of 16, [the petitioner] landed a modeling contract with the [redacted] in Paris, France, one of the finest in the world. . . .
- Moreover, these days [the petitioner] is globally represented by such prestigious modeling agencies such as . . . .
- Throughout the course of her impressive career, [the petitioner] has been invited to Model for a number of national and international brands and companies and worldwide campaigns . . . .
- In addition, [the petitioner] has been featured in and appeared on the covers of leading fashion publications around the world including . . . .
- Further, [the petitioner] has worked closely with major internationally renowned photographers such as . . . .
- I have been privileged to work with top [redacted] from around the world and can confidently state that [the petitioner] is an international [redacted] of exceptional ability. . . .
- In sum, I am tremendously impressed with [the petitioner's] acclaimed body of work and have no hesitation in stating that she is truly exceptional and has risen to the top of this highly competitive and creative field. . . .
- Furthermore, [the petitioner] has consistently received top modeling contracts with prestigious agencies and well-known companies that evidence her exceptional abilities and the widespread recognition she has received in the field.
- Therefore, I strong recommend that her petition for recognition as an alien of exceptional ability be granted. . . .

[redacted] a producer at [redacted], provides a letter that includes the language above but also includes some independent language. While the authors signed these letters, the use of almost entirely identical language reveals that, with the exception of [redacted] who added some language of her own, the language relating to the petitioner is not their own. Thus, these letters have little evidentiary value beyond establishing that these individuals support the petition.

The record, however, does contain letters with unique language. [redacted]r praises the petitioner's versatility and exceptional reputation but does not provide examples of how the petitioner is influencing the modeling industry. [redacted] affirms recommending the petitioner to his clients and praises the petitioner's career in a competitive field. [redacted] does not explain how the petitioner has influenced the modeling industry. [redacted], a professional photographer, states that the petitioner "belongs to a very excusive elite in a field that is fiercely competitive" but fails to provide examples of her influence in the field of modeling.

[redacted], Catalog Creative Manager for [redacted], asserts that she knew of the petitioner's work before working with the petitioner and affirms her "distinctive, versatile 'look.'" [redacted] confirms that exceptional fashion models are "essential" to her line of work and characterizes the petitioner's work as "acclaimed." [redacted] does not provide examples of how the petitioner has influenced the field of modeling.

[redacted] asserts that the petitioner has worked with him in [redacted] design room and that she has "exceptional talent for modeling clothes as well as providing design inspiration within the design studio." While this information suggests the petitioner may have influenced designs at this company, it does not suggest she has influenced the modeling industry as a whole.

[redacted] asserts that the petitioner's modeling has generated profits for her clients due to her ability to influence a great number of consumers. While this information reveals that the petitioner is a valuable asset to her clients and that she may influence consumers, it does not explain how she has influenced the modeling industry itself.

In her initial letter, [redacted] affirms that the petitioner has "successfully produced the look and mood required in each photo shoot" and, thus, is "one of the select few in the industry." [redacted] further asserts that the petitioner's "gift in modeling is critically acclaimed in the industry." As stated above, however, the national interest waiver is not a vehicle for self-petitioners who claim sustained acclaim but are unable to provide the extensive documentation of such acclaim as required under section 203(b)(1)(A) of the Act.

In a subsequent letter, [redacted] asserts that the petitioner's influence in the field is apparent from her consistent employment from age 16 through 39 in a field where most models retire at age 25. [redacted] affirms that the petitioner ranks at the top of other older and prominent models and concludes: "Through her work as an older Model she can rightly be credited with assisting the development and expansion of the modeling and fashion industries." [redacted] concludes: "In view of her impressive

accomplishments to date, [the petitioner] not only influences the field of fashion and modeling, but has had a demonstrable national impact on the same." As stated above, USCIS need not accept primarily conclusory assertions.[3] Moreover, merely repeating the language of the legal requirements does not satisfy the petitioner's burden of proof.[4] In their joint letter, [redacted] state that the petitioner's influence in the field as a whole is "plain to see" from the fact that there are only "a handful of models" the petitioner's age that have received similar success and notoriety. This statement fails to confirm that the number of "older" models is increasing due to the petitioner's success as an "older" model.

As stated above, the record contains no statistics regarding the number of "older" models before and after the petitioner's work as an "older" model. The record also lacks published career information for current or prospective models holding out the petitioner as an example of an older model able to continue working steadily. The petitioner also failed to submit materials from other older models affirming that they stayed in the field or rejoined the field after observing the petitioner's work.

Finally, [redacted], a Fashion Stylist, praises the petitioner's unique look that is "timeless" or "ageless" and asserts that she has transcended the typical use of "older" models only for limited shoots. [redacted] does not explain how the petitioner's unique look is a contribution to the field of modeling.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

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[3] *1756, Inc.*, 745 F. Supp. at 15.

[4] *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942 at *5.

The letters considered above primarily contain bare assertions of exceptional ability without specifically identifying innovations and providing specific examples of how those innovations have influenced the field. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.[5] The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Ultimately, the petitioner is a successful model who has remained in her occupation longer than many other individuals in that occupation. Counsel has provided no persuasive evidence that the petitioner, more than another fashion model of exceptional ability, would benefit the national interest. As stated above, it is the position of USCIS to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *NYSDOT,* 22 I&N Dec. at 217.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

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[5] *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942 at *5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).